

HOUSE BILL 3296  
By Johnson R

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, Part 4 and Title 57, Chapter 10, relative to civil and criminal liability for conduct involving alcohol and to provide for the administrative revocation of driver licenses under certain circumstances.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The general assembly finds and declares that enactment of this act is necessary:

(1) To provide safety for all persons using the highways of this state by quickly revoking the driving privilege of those persons who have shown themselves to be safety hazards by driving with an excessive concentration of alcohol in their bodies; and

(2) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for administrative review prior to the effective date of revocation, and an opportunity for a full hearing as quickly as possible after the revocation becomes effective.

SECTION 2.

(a) The department shall revoke the license of any person upon its determination that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was eight-hundredths of one percent (.08%) or more. For purposes of this act, alcohol concentration shall mean either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.

(b) The department shall revoke the license of any person upon its determination that the person refused a test to determine alcohol concentration in a person's blood as provided in Section 55-10-406.

(c) The department shall make an administrative review and a determination of these facts on the basis of the report of a law enforcement officer required in Section 3, and this determination shall be final unless a hearing is requested and held under Section 9 of this act.

(d) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

### SECTION 3.

(a) A law enforcement officer who arrests any person for a violation of Section 55-10-401, shall, within five (5) working days forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated Section 55-10-401, a report of the results of any chemical tests which were conducted or refusal to submit to a test, and a copy of the citation, driver license, and receipt for temporary permit, and complaint filed with the court. A copy of the completed notice of revocation form, a copy of any completed temporary permit form and any driver license taken into possession under this section shall be forwarded immediately to the department by the officer.

(b) The report required by this section shall be made on forms supplied by the department.

(c) The report required by this section shall be accepted as prima facie evidence in all administrative reviews and hearings authorized by this act.

### SECTION 4.

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in Section 2.

(b) The notice of proposed revocation shall be mailed to the person at the address provided in the enforcement officer's report if such address differs from the

address of record. The notice of proposed revocation is deemed delivered three (3) days after mailing.

(c) The notice of proposed revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request a hearing, and the procedure for requesting a hearing.

#### SECTION 5.

(a) Whenever the chemical test results for a person who is being charged with a violation of Section 55-10-401, show an alcohol concentration of eight-hundredths of one percent (.08%) or more, or the person refuses a test, the officer, acting on behalf of the department, shall serve the notice of proposed revocation personally on the arrested person.

(b) When the law enforcement officer serves the notice of proposed revocation, the officer shall take possession of any driver license issued by the state which is held by the person. When the officer takes possession of a valid driver license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for thirty (30) days after its date of issuance. If determination has not been made by the department under the provisions of Section 4 within sixty (60) days of the initial seizure of license, the driver may apply for a restricted license, as provided for in Section 55-50-502.

(c) A copy of the completed notice of proposed revocation form, a copy of any completed temporary permit form, and any driver license taken into possession under this section, shall be forwarded within five (5) working days to the department by the officer.

(d) The department shall provide forms for notice of proposed revocation and for temporary permits to law enforcement agencies.

(e) Any notice or citation completed by an officer shall contain a signed statement by the officer that the breathalyzer, if used, was properly calibrated at the time of use.

(f) Only law enforcement officers who have satisfactorily completed a recruit training program, approved by the Tennessee peace officers standards and training commission may act on behalf of the department by serving notice of proposed revocation, taking possession of a driver license and issuing a temporary permit as authorized by this section.

#### SECTION 6.

(a) The license revocation shall become effective thirty (30) days after the subject person has received the notice of proposed revocation as provided in Section 5.

(b) The period of license revocation under this section shall be as follows:

(1) The period shall be three (3) months if the person's driving record shows no prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years.

(2) The period shall be one (1) year if the person's driving record shows one (1) or more prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years.

(3) For purposes of this section, "alcohol or drug-related enforcement contacts" shall include any revocation under this act, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a vehicle while having an unlawful alcohol concentration, or while under the influence of alcohol, drugs, or alcohol and drugs.

(4) Persons who have no prior record as specified in Section 6(b)(1) and who submit to a chemical test in accordance with the provisions of Tennessee Code Annotated, Section 55-10-406, shall be eligible for a restricted driver license as provided in Tennessee Code Annotated, Section 55-50-502, after a minimum revocation period of thirty (30) days.

(5) Persons who have one (1) or more prior alcohol or drug-related enforcement contacts during the immediately preceding five (5) years shall not

be eligible for a restricted driver license during their period of revocation under this act.

(c) Where a license is revoked under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of Section 55-10-401, both the revocation under this section and the revocation under Section 55-10-401, shall be imposed, but the periods of revocation shall not exceed the longer of the two (2) revocation periods.

(d) If a person is acquitted of any charges under Section 55-10-401, if a nolle prosequi is taken, or if such charges are reduced or otherwise disposed of in favor of the defendant, the court shall notify the department and the license revocation shall cease upon receipt by the department of such notification.

#### SECTION 7.

(a) The periods of revocation specified by Section 6 are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances and no restricted driver license shall be issued during the revocation period, except as provided in Section 6(b). Provided, however, if any criminal charges arising out of the same incident have had final determination rendered by a court, the court may order a restricted license under the provisions of Section 55-10-403(d).

(b) No driving privilege may be restored until all applicable reinstatement fees have been paid and all requirements of Tennessee Code Annotated, Title 55, Chapter 12, have been satisfied. No more than one (1) fee shall be charged for license restoration for any one (1) offense even if a person loses a license under the provisions of this act and is also convicted of an offense under Section 55-10-401.

(c) Any person who has received a notice of proposed revocation under this act shall, prior to the return of any driver license taken pursuant to Section 5 of this act, be required to pay to the department of safety an administrative processing fee of twenty-five dollars (\$25.00). If a person arrested for and charged with violating Tennessee Code Annotated, Section 55-10-401, is acquitted of such charge, or if the charge is not

successfully prosecuted, such person's driver license shall be returned with reimbursement of such administrative fee.

#### SECTION 8.

(a) Upon receipt of the information provided by the law enforcement officer as required in Section 3(a), the department shall automatically conduct an administrative review and make a determination pursuant to Section 2 of this act.

(b) In such review, the department shall give consideration to all available information. If the department determines by a preponderance of the evidence that the person drove or was in actual physical contact of a motor vehicle while such person had an alcoholic concentration of eight-hundredths of one percent (.08%) or more, or that the person refused the test, the department shall sustain the order of revocation. If the evidence does not support such determination or if the officer fails to provide the department with required documentation within the time period specified in Sections 3 and 5 of this act, the department must immediately rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under Section 9 of this act.

(c) The department shall make a determination upon administrative review at least five (5) days prior to the effective date of the revocation order. If the department is unable to make a determination within the time limits specified, it shall stay the revocation pending such determination. If the department rescinds the revocation, the department shall return, by registered mail, return receipt requested, the person's driver license.

#### SECTION 9.

(a) Any person who has received a notice of proposed revocation may, within thirty (30) days of receipt of the notice, make a written request for a hearing on forms provided by the department to the address provided on the form. If the person's driver license has not been previously surrendered, it must be surrendered at the time that request for hearing is made. A request for hearing does not stay the license revocation.

(b) The hearing shall be scheduled to be held as quickly as practicable within thirty (30) days of receipt of the request for a hearing. The hearing shall be held at a place designated by the department as close as practicable to the place where the arrest occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations, to examine witnesses and take testimony, to receive relevant evidence, to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken, to regulate the course and conduct of the hearing, and to make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a motor vehicle while having an alcohol concentration of eight-hundredths of one percent (.08%) or more, or the person refused a chemical analysis test. If the presiding hearing officer finds the affirmative of this issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(h) The department of safety shall reimburse any governmental agency expenses incurred while testifying in hearings authorized by this act, when the department of safety subpoenas the governmental agency's representative. Funds for such payments shall be paid from the expendable receipts collected by the department under Section 55-12-129.

#### SECTION 10.

(a) Within thirty (30) days of the issuance of the final determination of the department following a hearing under Section 9, a person aggrieved by the determination shall have the right to file a petition in the chancery court in Davidson County or in the chancery court for the county where the arrest or offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. The standard to be used by the chancery court in deciding whether the department's determination should be affirmed or reversed is whether there is or is not a preponderance of evidence to support such determination.

SECTION 11. Title 4, Chapter 5, the Tennessee Uniform Administrative Procedures Act, applies to the extent it is consistent with proceedings under Sections 9 and 10 of this act relating to the administrative hearing and judicial review.

SECTION 12. As used in this act unless the context clearly requires otherwise:

(1) "Department" means the Tennessee department of safety;

(2) "Driver license" means any license to operate a motor vehicle issued under Tennessee law;

(3) "Law enforcement officer" refers to any law enforcement officer who has satisfactorily completed a recruit training program approved by the Tennessee peace officer standards and training commission;

(4) "License" means any driver license or any other license or permit to operate a motor vehicle issued under, or granted by, Tennessee law including:

(A) Any temporary license or instruction permit;



(B) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(C) Any nonresident's operating privilege as defined herein;

(5) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in Tennessee;

(6) "Revocation" means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in this act; and

(7) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada.

SECTION 13. For the purpose of implementing the provisions of Sections 1—14 of this act, the commissioner of safety is directed to apply for all applicable federal funding.

SECTION 14. Tennessee Code Annotated, Section 55-10-416, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1) It is an offense for any person to possess any open alcoholic beverage container or to consume any alcoholic beverage in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in this state.

(2) For purposes of this section:

(A) "Open container" means any container containing alcoholic beverages or beer, the contents of which are immediately capable of being consumed or the seal of which has been broken;

(B) A motor vehicle is in operation if its engine is operating, whether or not the motor vehicle is moving.

(C) Definition for "public highway or right-of-way of a public highway" means the entire width between the right-of-way boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(b) Nothing in this section shall prohibit::

(1) The possession of an open alcoholic beverage container in the glove compartment of a motor vehicle provided such compartment is locked;

(2) The possession of an open alcoholic beverage container in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk;

(3) The possession of an open alcoholic beverage container in any area not normally occupied by the driver or a passenger in a motor vehicle that is not equipped with a trunk;

(4) The possession of an open alcoholic beverage container by an individual who is strictly a passenger and not the driver, in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation (such as buses, taxis, and limousines);

(5) The consumption of an alcoholic beverage by an individual who is strictly a passenger, and not the driver, in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation (such as buses, taxis, and limousines);

(6) The possession of an open alcoholic beverage container by an individual who is strictly a passenger, and not the driver, in the living quarters of a house coach or house trailer;

(7) The consumption of any alcoholic beverage by an individual who is strictly a passenger, and not the driver, in the living quarters of a house coach or house trailer.

(c)

(1) A violation of this section is a Class C misdemeanor, punishable by a fine only.

(2) For a violation of this section, a law enforcement officer shall issue a citation in lieu of continued custody, unless the offender refuses to sign and accept the citation, as provided in § 40-7-118.

SECTION 15. Tennessee Code Annotated, Section 57-10-102, is amended by deleting the section in its entirety and substituting instead the following:

Notwithstanding the provisions of § 57-10-101, a judge or jury may pronounce a judgment awarding damages to or on behalf of any party who has suffered personal injury or death against any person who has sold any alcoholic beverage or beer, if such judge or jury finds by a preponderance of the evidence that the sale by such person of the alcoholic beverage or beer was the proximate cause of the personal injury or death sustained and that such person:

(a) Knew or should have known that the person to whom the alcoholic beverage or beer was sold was under the age of twenty-one (21) years and that the consumption of the alcoholic beverage or beer so sold was the proximate cause of the injury or death; or

(b) Sold the alcoholic beverage or beer to someone the person knew or should have known was an obviously intoxicated person and that the consumption of the alcoholic beverage or beer so sold was the proximate cause of the injury or death.

SECTION 16. Tennessee Code Annotated, Section 55-10-403, is amended by deleting the fifth and sixth sentences of subsection (a)(1) and substituting instead the following:

For the third conviction, there shall be imposed a fine of not less than two thousand five hundred dollars (\$2,500) nor more than ten thousand dollars (\$10,000), and the person or persons shall be confined in the county jail or workhouse for not less than one hundred twenty (120) days nor more than eleven (11) and months twenty-nine (29) days, and the court shall prohibit such convicted person or persons from driving a vehicle in the state of Tennessee for a period of time of not less than three (3) years nor

more than ten (10) years. Notwithstanding any other provision of law to the contrary, the fourth or subsequent conviction shall be a Class E felony punishable by a fine of not less than four thousand dollars (\$4,000) nor more than fifteen thousand dollars (\$15,000); by confinement for not less than one hundred fifty (150) consecutive days, to be served day for day, nor more than the maximum punishment authorized for the appropriate range of a Class E felony; and the court shall prohibit the person from driving a motor vehicle for a period of five (5) years.

SECTION 17. This act shall take effect July 1, 2004, the public welfare requiring it.